IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CMA.No. 153 of 2002()

(AGAINST THE JUDGMENT AND DECREE DTD. 9/1/2002 IN A.S.NO.224/1993 ON THE FILE OF THE DISTRICT COURT, TRIVANDRUM, WHICH IS FILED AGAINST THE JUDGMENT AND DECREE IN OS.288/1980 of III ADDL.MUNSIFF COURT, TRIVANDRUM)

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APPELLANT: 4TH RESPONDENT/4TH DEFENDANT):

PAPPUKUTTY PADMANABHAN, T.C.40/1007, VILAYIL VEEDU, KURIYATHI, PUTHENCOTTA, TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS: (APPELLANTS & RESPONDENTS 6 TO 32/ PLAINTIFFS & DEFENDANTS 1 TO 3 & DEFENDANTS 5 TO 14):

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1. **K.VIJAYAMMA, VILAYIL VEEDU, T.C.40/1006, KURIYATHI, PUTHENKOTTA, TRIVANDRUM.**
2. **USHAKUMARI, DO. DO.**
3. **AACHI AMMAL SUNDARAMMAL, VADAKKE POTTAYIL VEEDU, SOOLANKUDI, POOVAR P.O., TRIVANDRUM.**
4. **AACHI AMMAL KRISHNAMMAL, T.C.NO.44/1292, PUTHUVAL PUTHEN VEEDU, KAMALESWARAM, MUTTATHARA VILLAGE, TRIVANDRUM.**

...2/-

5. AACHI AMMAL SANTHA, PLAPPALLY PURAYIDOM, PUTHENKOTA, IRANIMUTTOM VILLAGE, TRIVANDRUM.

6. AACHI AMMAL RAJAMMA, PLAPPALLY PURAYIDOM DO. DO.

7. BHAGAVATHY AMMA, W/O. DECEASED KOLAPPAN ASARI, VILAYIL VEEDU, TC.40/1005, KURIYATHI, PUTHENKOTTA, TRIVANDRUM.

8. K.THYAGARAJAN, OF DO. DO.

9. KRISHNANKUTTY, VILAYIL VEEDU, KURIYATHI, PUTHENKOTTA, TRIVANDRUM.

10. K.RAMACHANDRAN, DO. DO.

11. K.SHANMUGHAN OF DO. DO.

12. KAMALAMMA, W/O. KRISHNAN ASARI, THONNAKKAL VEEDU, KULATHARA, KALADI, TRIVANDRUM.

13. RETNAKARAN, S/O. KRISHNAN ASARI, DO. DO.

14. BABU, S/O. KRISHNAN ASARI, DO. DO.

15. SIVAN, S/O. KRISHNAN ASARI, DO. DO.

16. MOHAN, S/O. KRISHNAN ASARI, DO. DO.

17. VALSALA, DO. DO.

18. SANTHA, DO. DO.

19. THANKAMMA, W/O. MADHAVAN ASARI,
T.C.1503, MULAYARA, KAMUKARA VEEDU,
MUTTATHARA (VIA), TRIVANDRUM.

20. SASIDHARAN, W/O. MADHAVAN ASARI, DO. DO.

21. GOPAKUMAR, S/O. MADHAVAN ASARI, DO. DO.

22. GIREESAN, S/O. MADHAVAN ASARI. DO. DO.

23. THANKAMMA GIRIJA, DO. DO.

24. BABY, D/O. KUNJA THAI, TC.43/497,
CHARUMOODU VEEDU, MULAYARA, MUTTATHARA (VIA),
TRIVANDRUM.

25. JAYAN, DO. DO.

26. N.DEVAMMAL ALIAS REMA, TC 40/1005,
VALAYIL VEEDU, KURIYATHI,
PUTHENKOTTA, TRIVANDRUM.

27. R.SANTHA, D/O. DEVAMMAL, DO. DO.

28. R.SUJITHA, D/O. DEVAMMAL, DO. DO.

29. SANGEETHA, D/O. DEVAMMAL, DO. DO.
(MINOR), REP. BY GUARDIAN MOTHER
DEVAMMAL, RESIDING AT DO. DO.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.4311/2002 IN C.M.A.NO.153/2002

DISMISSED

3/07/2007 **SD/- PIUS C.KURIAKOSE, JUDGE**

/TRUE COPY/

Kss

PIUS C. KURIAKOSE, J.

C.M.A. No.153 OF 2002

Dated this the 3rd day of July, 2007

JUDGMENT

It is submitted by Mr.George Varghese, counsel for the 1st respondent-plaintiff that since there was no stay from this court, the trial has proceeded pursuant to the remand order which is impugned in this CMA. Counsel submitted that an application filed by the appellant for deputation of a commissioner for assessment of value of improvements was allowed and the commissioner has filed his commission report also and the case now stands posted for further evidence. If these are the facts, there is no point in considering the legality of the order of remand which has been made by the court of appeal in the context of value of improvements.

Sri.G.S.Reghunath requests that the scope of the remand order of the learned District Judge be enlarged and trial court be directed to re-consider the question as to whether the appellant is eligible for the benefit of Section 4 A 1 (b) of the Land Reforms Act. Sri.George Varghese, would oppose the above request tooth and nail. He took me to Paragraph 16 of the judgment of the lower appellate court. According to him the finding of the learned District Judge that the petitioner is not entitled for the benefit of Section 4 A 1 (b) of the Land Reforms Act is

unassailable in the light of the evidence which have came on record. Mr.Reghunath would submit that the benefit of Section 4 A 1 (b) was declined by the District Judge on the reason that there was no evidence to prove that the 4th defendant had put up any building for his residence. Learned counsel requests that since matter is back before the trial court, the trial court be directed to consider the question. Learned counsel invited my attention to the revenue officer's report as well as the commissioner's report which according to him gives some support to his client's case that apart from the building mentioned in the mortgage deed there was one more building standing in the property. I notice some force in the above submission of Mr.Reghunath. Learned counsel also pointed out that it was admitted in the plaint itself that more than one building exists in the plaint schedule property. Under the above circumstance even as I approve the order of remand passed by the lower appellate court in the context of value of improvements, I enlarge the scope of the remand order by directing the trial court to re-consider the question whether the appellant is entitled for the benefit of Section 4 A 1 (b) of the Land Reforms Act.

PIUS C. KURIAKOSE, JUDGE

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